Signed April 17, 2009.

Ronald B. King
United States Chief Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

IN RE:	§	
	§	
TED HOPKINS ROBERTS AND MARY ANN ROBERTS,	§	**CASE NO. 04-55897-RBK**
	§	
	§	
DEBTORS	§	**CHAPTER 7**
	§	
	§	
UNITED STATES TRUSTEE, REGION 7	§	
	§	
VS.	§	**ADVERSARY NO. 06-5121-RBK**
	§	
TED HOPKINS ROBERTS AND MARY ANN ROBERTS	§	

ADDITIONAL FINDINGS OF FACT AND CONCLUSIONS OF LAW

Ted Hopkins Roberts ("Ted Roberts") and wife, Mary Ann Roberts ("Mary Roberts") (collectively "Debtors" and/or "Defendants"), filed a Voluntary Petition (the "Petition") under Chapter 11 of the Bankruptcy Code on October 13, 2004 (the "Petition Date"). (Case No. 04-55897, Document #1.) Pursuant to a motion filed by Debtors on March 29, 2005, the Court entered an order on March 31, 2005, converting the case from Chapter 11 to Chapter 7. (Case No. 04-55897,

Document #79, 82.) The original deadline for filing an objection to Debtors' Chapter 7 discharge was July 11, 2005, which, through a series of agreed orders, was extended to July 14, 2006. On July 11, 2006, the United States Trustee (the "U.S. Trustee" and/or "Plaintiff") filed a Complaint Objecting to Debtors' Discharge (the "Complaint") pursuant to 11 U.S.C. § 727(c)(1) and asserted actions under: (1) § 727(a)(4)(A) for filing a false statement of financial affairs and/or schedules; (2) § 727(a)(3) for destruction of and/or failure to keep or preserve records; and (3) § 727(a)(2)(A) and/or (B) for concealing and/or transferring assets with the intent to hinder, delay, or defraud. (Document #1.)

Debtors' original Schedules and their Statement of Financial Affairs ("SOFA") were filed on November 8, 2004. Amended Schedules or SOFAs were filed seven additional times on November 26, 2004; November 29, 2004; November 30, 2004; December 17, 2004; April 15, 2005; July 29, 2005; and January 11, 2007.

The trial was held on April 3, 2007 through April 5, 2007. On May 4, 2007, the Court announced findings of fact and conclusions of law on the record after the close of the evidence, pursuant to FED. R. BANKR. P. 7052. The Court ruled in favor of the U.S. Trustee on Counts I through V, VII, IX, X, and XIV. The relief requested by Plaintiff was denied as to Counts VI, VIII, XI, XII, and XIII. Defendants subsequently appealed to the United States District Court for the Western District of Texas.

On November 26, 2007, Judge Xavier Rodriguez, United States District Court, Western District of Texas, ordered the case remanded:

> [T]o the United States Bankruptcy Court for the Western District of Texas for the exclusive and limited purpose of having that court make additional written findings of fact and conclusions of law establishing

> why denial of discharge under 11 U.S.C. § 727(a)(2) and (3) is supported, and confirming whether its prior findings establish that denial of discharge under 11 U.S.C. [§] 727(a)(4) is supported.

(Document #206.) Consequently, in addition to the findings of fact and conclusions of law stated orally on the record on May 4, 2007, the Court hereby makes the following Additional Findings of Fact and Conclusions of Law:

ADDITIONAL FINDINGS OF FACT

1. Debtors are both licensed attorneys admitted to practice in the State of Texas. Ted Roberts graduated from the University of Texas School of Law, received his Texas law license in 1991, and practiced as a personal injury litigator with Ted H. Roberts, P.C. He also received a Masters of Business Administration ("M.B.A.") from the University of Texas, previously taught emergency medicine, and operated an investment consulting entity. Mary Roberts graduated from the University of Texas in 1978 with a Bachelor of Science degree, graduated from St. Mary's Law School, and received her Texas law license in 1993.

2. On June 15, 2000, Ted Roberts executed and filed an Assumed Name Certificate for a partnership in Bexar County called Ezekiel I ("Ezekiel"). Ted Roberts was a partner and/or managing partner of Ezekiel through 2003, and Mary Roberts was a partner through at least 2002. Robert West, an attorney who had an office with Ted Roberts, was also an investor in Ezekiel. Ezekiel was formed as an investment partnership to take advantage of a private placement of VSI/Simtrol Stock (the "VSI/Simtrol Stock"). Accounts were held in Ezekiel's name at both Compass Bank and Fidelity Investments. In addition to the funds deposited in those accounts for the Ezekiel partnership, Ted Roberts made cash deposits of approximately $298,000.00, which were either owned by him or for his personal benefit. In April or May 2003, 25,000 shares of the

VSI/Simtrol Stock were transferred from the Ezekiel Compass account to Debtors' personal Compass account. Debtors did not disclose their involvement in Ezekiel during the six-year period prior to filing their Statement of Financial Affairs on November 8, 2004 ("Original SOFA"). Ted Roberts contended that he did not list Ezekiel because he believed that a single-stock investment general partnership would not be classified as a business. On November 29, 2004, Debtors amended the SOFA to include Ezekiel in the third of eight sets of schedules filed in the bankruptcy case.

3. On December 28, 2001, Debtors filed Articles of Incorporation with the Office of the Secretary of State of Texas for the Roberts Foundation for Children (the "Foundation"), a nonprofit corporation that Debtors created to assist severely injured children. The Articles of Incorporation listed Ted Roberts, Mary Roberts, and Robert West as Directors. The Foundation was funded with a portion of the money Ted Roberts made representing the severely injured. Approximately $70,000.00 was deposited by Ted Roberts into a Fidelity Investment account in the name of the Foundation. On January 22, 2004, Mary Roberts, as Chairman of the Board of Directors for the Foundation, signed the Foundation's Articles of Dissolution. Debtors did not disclose their involvement with the Foundation until their third set of Schedules.

4. Sometime prior to the end of 2001, Robert West became dissatisfied with the financial performance of Ezekiel and the decline of his investment. On December 19, 2001, Robert West filed a lawsuit against Debtors for misappropriation of funds from Ezekiel. An injunction was issued that same day which prohibited Debtors from withdrawing any assets from Ezekiel. During that period, the stock market declined, and the VSI/Simtrol Stock held by Ezekiel lost approximately 90 percent of its value. Unable to withdraw funds from Ezekiel that Debtors asserted were personal, Debtors began to experience mounting financial difficulties. They were unable to pay the law firm

overhead and their own personal expenses, and federal tax liens were placed on their property. In June 2002, Ted H. Roberts, P.C., borrowed $50,000.00 from the Foundation for operating capital and an additional $19,000.00 in September 2002. These loans were never repaid. As of the trial date, Ezekiel had not been formally dissolved.

5. On August 3, 2004, approximately 71 days prior to the Petition Date, Debtors, as Buyers, and Ernest and Mary Ann Martinez (the "Martinezes"), as Sellers, executed an earnest money contract and one year lease (the "Martinez Contract" a/k/a the "Burwick Property Contract"). Under this agreement, Debtors agreed to lease with an option to purchase real property located at 9514 Burwick in San Antonio, Texas (the "Burwick Property"). The purchase price was $170,000.00. On August 3, 2004, when the Martinez Contract was executed, Mary Roberts wrote a check in the amount of $5,000.00 to the Martinezes as an earnest money deposit (the "Martinez Deposit") for the Martinez Contract. The Martinez Contract provided that Debtors could lease the Burwick Property for approximately one year with a subsequent purchase and closing date of August 1, 2005 ("Closing Date"). On May 3, 2005, Debtors executed an Assignment of Rights under Earnest Money Contract and Buyer's Residential Lease (the "Assignment") to Mary Roberts's parents, Daniel F. Schorlemer and Caroline W. Schorlemer (the "Schorlemers"). On or about June 1, 2005, the Schorlemers purchased the Burwick Property from the Martinezes. Debtors did not receive a refund of the Martinez Deposit nor did they communicate with the Martinezes regarding a default. They testified that it was their understanding that they forfeited the Martinez Deposit by failing to close on the Burwick Property. A faxed letter from Debtors' bankruptcy attorney dated June 23, 2006, stated that:

> With respect to the $5,000 earnest money payment, it appears that the $5,000 was indeed forfeited to the Martinez's [sic] as damages for the Roberts's failure to close on the house. A review of the settlement statement shows a $5,000 down payment. While this transaction was solely between the Martinez's [sic] and the Schorlemer's [sic], it does appear that the Martinez's [sic] credited the forfeited $5,000 and included it as part of the down payment.

Plaintiff's Exhibit 23. In addition to the $5,000.00 credit described in the letter, Mary Roberts, as agent for the Buyers, received a real estate commission on the postpetition sale to the Schorlemers. Debtors' executory interest in the Martinez Contracts was listed in their original Schedule "G" ("Original Schedules") filed on November 8, 2004, and the description stated: "Executory interest in Lease-Purchase Agreement Contract to be ASSUMED." Debtors did not disclose, however, any interest in the $5,000.00 Martinez Deposit in their Original Schedules or any of the seven subsequent sets of Schedules.

6. On June 12, 2004, Mary Roberts wrote check number 1410 for $1,000.00 to Lawyers' Title ("Lawyers' Title Check") from a Compass Bank account that was held in her name. The Lawyers' Title Check memo noted that it was for "earnest money." Upon questioning by the U.S. Trustee and after various requests by both the U.S. Trustee and the Chapter 7 Trustee, Debtors failed to recall or produce specific information regarding the Lawyers' Title Check. Debtors initially professed ignorance as to its disposition, but did agree to investigate, which led to Debtors' contention that the information was included in previously provided records. In the spring of 2006, the Chapter 7 Trustee filed a motion to compel Debtors to turn over copies of records relating to the Lawyers' Title Check and the Martinez Deposit. The Chapter 7 Trustee subsequently received a copy of the Lawyers' Title refund check dated August 23, 2004 (the "Lawyers' Title Refund Check"), which was a refund of the $1,000.00 Lawyers' Title Check. After further investigation

and production requests, the Chapter 7 Trustee discovered that the Lawyers' Title Refund Check had been deposited by Mary Roberts into a Broadway Bank account in the name of Ted and Mary Roberts and Daniel F. Schorlemer (the "Broadway Bank Account"). Debtors failed to disclose their interest in the Lawyers' Title earnest money deposit ("Lawyers' Title Earnest Money Deposit") on their original Schedule "B," as filed on November 8, 2004 ("Original Schedules"). It was not until Debtors' eighth Schedules were filed that the Broadway Bank Account was disclosed.

7. Debtors also held 4,500 shares of ACIS Stock (the "ACIS Stock"), which was also not disclosed on Debtors' Original Schedule "B." Debtors' explanation for that omission was that they had forgotten about the ACIS Stock because it was located in a safe deposit box. They did list it on their amended SOFA and fifth Schedules filed on December 17, 2004, claiming that it was worth only about $100.00. Mary Roberts testified that there was no market for the ACIS Stock and that it had a *de minimis* value. On a financial statement dated July 4, 2003 that was provided to the IRS (the "IRS Financial Information Statement"), however, Debtors listed the ACIS Stock as an asset valued at $1,500.00. Mary Roberts testified that she did not inspect the safe deposit box before filling out the Original Schedules because it had only been a month since she had opened the safe deposit box to look for her son's birth certificate and at that time she had failed to notice the presence of the ACIS Stock certificates. Debtors, likewise, did not review the IRS Financial Information Statement prior to filling out the Original Schedules.

8. A claim by Debtors against Ted H. Roberts, P.C., for $35,625.00 was also undisclosed. In his defense of the omission, Ted Roberts stated that not only was there no note to evidence Debtors' claim against the business, but also that the claim of the business itself against Debtors was larger; therefore, it would have been impossible for the estate to receive a net amount.

The claim against Ted H. Roberts, P.C., for $35,625.00 (the "Claim") was eventually disclosed on Debtors' fifth Schedules.

ADDITIONAL CONCLUSIONS OF LAW

1. ***Denial of Discharge under 11 U.S.C. § 727(a)(2)***.

Section 727(a)(2)(A) and (B) of the Bankruptcy Code provides, in pertinent part:

> (a) The court shall grant the debtor a discharge, unless–
>
> . . . .
>
> (2) the debtor, with intent to hinder, delay, or defraud a creditor or an officer of the estate charged with custody of property under this title, has transferred, removed, destroyed, mutilated, or concealed, or has permitted to be transferred, removed, destroyed, mutilated, or concealed–
>
> (A) property of the debtor, within one year before the date of the filing of the petition; or
>
> (B) property of the estate, after the date of the filing of the petition. . . .

11 U.S.C. § 727(a)(2)(A)-(B). The Fifth Circuit requires the following four elements for denial of discharge for concealment or transfer under § 727(a)(2)(A): (1) a transfer or concealment of property; (2) belonging to the debtor; (3) within one year of the filing of the petition; and (4) with intent to hinder, delay, or defraud a creditor or officer of the estate. ***Cadle Co. v. Pratt*** (***In re Pratt***), 411 F.3d 561, 565 (5th Cir. 2005); *see also* ***Robertson v. Dennis*** (***In re Dennis***), 330 F.3d 696, 701 (5th Cir. 2003). The elements for § 727(a)(2)(B) are substantially the same as for § 727(a)(2)(A) except that the transfer or concealment of property of the estate would have had to occur after a bankruptcy petition was filed. Therefore, the following four elements are required under

§ 727(a)(2)(B) for denial of discharge for transfer or concealment: (1) a transfer or concealment of property; (2) belonging to the estate; (3) after the date of the filing of the petition; and (4) with intent to hinder, delay, or defraud a creditor or officer of the estate. *See* ***id***.

The requisite intent of a debtor to hinder, delay, or defraud must be established. Regarding fraud, "[t]he intent to defraud must be actual, not constructive." ***Id***. "Nevertheless, 'actual intent [to defraud] . . . may be inferred from the actions of the debtor and may be proven by circumstantial evidence.'" ***Id***. (quoting ***Pavy v. Chastant*** (***In re Chastant***), 873 F.2d 89, 90 (5th Cir. 1989)). The following factors show actual intent to defraud:

> (1) The lack or inadequacy of consideration; (2) the family, friendship or close associate relationship between the parties; (3) the retention of possession, benefit or use of the property in question; (4) the financial condition of the party sought to be charged both before and after the transaction in question; (5) the existence or cumulative effect of the pattern or series of transactions or course of conduct after the incurring of debt, onset of financial difficulties, or pendency or threat of suits by creditors; and (6) the general chronology of the events and transactions under inquiry.

Id. at 565 (quoting ***Chastant***, 873 F.2d at 91). Moreover, there is a presumption of fraudulent intent when a debtor transfers property to relatives. ***Pratt*** at 565-66. Once the presumption arises, the burden is on the debtor to produce evidence to rebut the presumption of fraudulent intent. ***Id***. at 566.

A. ***Count XIV, Denial of Discharge under 11 U.S.C. § 727(a)(2)(B) (Transfer of Martinez Earnest Money Deposit)***.

Debtors did not dispute that they paid the $5,000.00 Martinez Deposit to the Martinezes on or about August 3, 2004, when they signed the Martinez Contract (Pl.'s Exh. 70) for the Burwick Property. (Trial Tr., Vol. 3 at 584.) Approximately 71 days later, Debtors filed their petition and noted in their Original Schedule "G" that they had an "[e]xecutory interest" in the Martinez

Contracts and that the contracts were "to be ASSUMED" by Debtors; however, they failed to list the Martinez Deposit. (Trial Tr., Vol. 3 at 585.) (Pl's Exh. 4.) Mary Roberts agreed that "to be ASSUMED" meant that they wanted to continue performance of the Martinez Contract. (Trial Tr. Vol. 3 at 586.)

On May 3, 2005, however, Debtors executed an Assignment (Pl.'s Exh. 71) of their rights under the Martinez Contract to the Schorlemers, Mary Roberts's parents. (Trial Tr., Vol. 3 at 586-587.) The Assignment specifically stated that Debtors entered into an "earnest money contract and Buyer's Residential Lease for the purchase and lease" of the Burwick Property. (Pl.'s Exh. 71.) The Schorlemers subsequently purchased the Burwick Property from the Martinezes. (Trial Tr., Vol. 3 at 587-588.) (Pl.'s Exh. 72.)

The Chapter 7 Trustee believed that the Martinez Deposit was an asset of the bankruptcy estate, but he also contended that a transfer of the Martinez Deposit had occurred. (Trial Tr., Vol. 1 at 96.) In the spring of 2006, the Chapter 7 Trustee, after numerous attempts to collect the Martinez Deposit, filed a motion to compel Debtors to turn over the records relating to the Martinez Deposit. (Trial Tr., Vol. 1 at 95-97.) In response to the motion, the Chapter 7 Trustee received a letter dated June 23, 2006, from Debtors' bankruptcy attorney, which claimed that Debtors had forfeited the Martinez Deposit and credited it to the Schorlemers' account. (Pl.'s Exh. 23.) (Trial Tr., Vol. 1 at 103.) The letter stated that "[w]hile this transaction was solely between the Martinez's [sic] and the Schorlemer's [sic], it does appear that the Martinez's [sic] credited the forfeited $5,000 and included it as part of the down payment." (Pl.'s Exh. 23.) (Trial Tr., Vol. 1 at 98.)

In their testimony, Debtors disputed that the credit of the Martinez Deposit to the Schorlemers was a transfer or a constructive transfer. (Trial Tr. Vol. 3 at 621.) In fact, Debtors

claimed that it was their understanding that the $5,000.00 was not an earnest money deposit, but a payment to the Martinezes for a one-year delay in closing and for allowing Debtors the opportunity to lease the Burwick Property. (Trial Tr., Vol. 3 at 620-622.) Debtors argued that they did not have an interest in the $5,000.00 at the time they filed for bankruptcy (Trial Tr., Vol. 3 at 622 and Vol. 2 at 466) and asserted that although the Schorlemers' purchase price looked identical to Debtors' intended purchase price in the amount of $170,000.00, except for a $5,000.00 credit to the Schorlemers' purchase that appeared to be the Martinez Deposit, the transaction was not actually the same because Debtors increased the Martinezes' asking price by $5,000.00. (Trial Tr., Vol. 2 at 471-472.)

The evidence, however, shows that the $5,000.00 Martinez Deposit was in fact an "earnest money deposit." (Pl.'s Exh. 70.) Debtors were never notified that they defaulted on the Martinez Contracts or that the Martinez Deposit was forfeited (Trial Tr., Vol. 3 at 584-585); nor did they receive a refund of the Martinez Deposit. (Trial Tr., Vol. 2 at 468.) Debtors' interest in the Martinez Deposit, therefore, should have been disclosed as property of the bankruptcy estate. By assigning their rights under the Martinez Contracts to the Schorlemers after filing bankruptcy, Debtors transferred property which should have belonged to the estate. Furthermore, Mary Roberts's commission for representing the Schorlemers in their purchase of the Burwick Property indicates that the Martinez Deposit was actually credited towards the Schorlemers' purchase. And after the Burwick Property was sold to the Schorlemers, it was leased back to Debtors. (Trial Tr. Vol. 2 at 470.) As of the trial date, the Schorlemers were still leasing the Burwick Property to Debtors. (Trial. Tr. Vol. 3 at 546.)

The Debtors failed to rebut the presumption of fraudulent intent. *See* ***Pratt***, 411 F.3d at 565-66. The Debtors intended to prevent the Chapter 7 Trustee from receiving the Martinez Deposit.

B. ***Count X, Denial of Discharge under 11 U.S.C. § 727(a)(2)(B) (Concealment of Martinez Earnest Money Deposit)***.

The evidence shows that with regard to the Martinez Deposit, no mention of the $5,000.00 was made in connection with the Martinez Contract, which was listed on Debtors' Original Schedule "G." (Pl.'s Exh. 4.) In April 2005, the Chapter 7 Trustee was appointed after Debtors voluntarily converted their Chapter 11 bankruptcy case. (Trial Tr., Vol. 1 at 91.) On April 7, 2005, the Chapter 7 Trustee requested Debtors' bank account records from October 2003 to October 2004. (Trial Tr., Vol. 1 at 91-92.) The Chapter 7 Trustee testified that Debtors did not provide all requested records and that a subsequent request for the records was made because the documentation was incomplete. (Trial Tr., Vol. 1 at 92-93.) According to the Chapter 7 Trustee, Debtors failed to produce all of the original bank statements. (Trial Tr., Vol. 1 at 93.)

Likewise, the bank statements Debtors produced from 2005 were incomplete. (Trial Tr., Vol.1 at 93.) On September 7, 2005, the Chapter 7 Trustee sent a faxed letter to Debtors' bankruptcy attorney requesting, in part, the records of the Martinez Deposit. (Trial Tr., Vol. 1 at 94.) (Pl.'s Exh. 20.) Debtors finally did provide some documents from the Compass Bank Account (Trial Tr., Vol. 1 at 95.) (Pl.'s Exh. 21.), but in May 2006, the Chapter 7 Trustee was forced to file a motion to compel Debtors to turn over all of the deposits and records pertaining to the Martinez Deposit. (Trial Tr., Vol. 1 at 96-97.) In response, the Chapter 7 Trustee received a letter from Debtors' attorney stating, among other things, that "[d]ebtors do not have any deposit tickets." (Pl.'s Exh. 23.) (Trial Tr., Vol. 1 at 97.) The letter also claimed that the $5,000.00 had been forfeited and credited

to the Schorlemers' purchase of the Burwick Property as part of the down payment. (Trial Tr., Vol. 1 at 98 and 103.) During the trial, Debtors consistently asserted that the $5,000.00 was not a deposit, but a payment to the Martinezes for a one-year delay in closing and for the opportunity to lease the Burwick Property. (Trial Tr., Vol. 3 at 619-620 and Vol. 2 at 470.) As stated above in the § 727(a)(2)(B) transfer discussion, however, the $5,000.00 was described initially as an "earnest money deposit." (Pl.'s Exh. 70.)

The Chapter 7 Trustee believed that the $5,000.00 should have been reported as an asset of the bankruptcy estate. (Trial Tr., Vol. 1 at 96.) From the Petition Date through the conversion of the case on March 31, 2005, until the filing of the Motion to Compel in May 2006, Debtors concealed the $5,000.00 Martinez Deposit in the form of a credit for the benefit of the Schorlemers in their purchase of the Burwick Property that was subsequently leased back to Debtors. It is apparent that Debtors did conceal the Martinez Deposit with the intent to hinder, delay, or defraud the Chapter 7 Trustee from discovering the $5,000.00 Martinez Deposit, which rightfully belonged to the estate.

C. ***Count IX, Denial of Discharge under 11 U.S.C. § 727(a)(2)(A) or (B) (Concealment of Lawyers' Title Earnest Money Deposit)***.

The Chapter 7 Trustee had the same difficulty obtaining records and documentation from the Debtors for the Lawyers' Title Earnest Money Deposit as he did for the Martinez Earnest Money Deposit. (Trial Tr., Vol. 1 at 90-103.)

On June 12, 2004, Mary Roberts wrote the Lawyers' Title Check for $1,000.00 as "earnest money" from a Compass Bank account that was held in her name. (Trial Tr., Vol. 3 at 538.) (Pl.'s Exh. 21.) The Chapter 7 Trustee testified that he wanted a copy of the Lawyers' Title Check so that

he could follow any potential money trails and determine to what the "earnest money" related and whether there was a completed contract. (Trial Tr., Vol. 1 at 94-95.) The Chapter 7 Trustee further testified that Debtors did not provide all of the records he requested on April 7, 2005, and that he had to make a subsequent request for the records because the documentation was incomplete. (Trial Tr., Vol. 1 at 92-93.) On September 7, 2005, the Chapter 7 Trustee faxed a letter to Debtors' bankruptcy attorney specifically requesting the Lawyers' Title Check records. (Trial Tr., Vol. 1 at 93-94.) (Pl.'s Exh. 20.) Debtors responded by only providing some documents from the Compass Bank Account. (Trial Tr., Vol. 1 at 95.) (Pl.'s Exh. 21.) It was not until August 2006 that the Chapter 7 Trustee finally received a copy of the Lawyers' Title Refund Check from Debtors' bankruptcy attorney. (Trial Tr., Vol. 1 at 99.) (Pl.'s Exh. 24.)

After receiving a copy of the Lawyers' Title Refund Check, the Chapter 7 Trustee continued to request related records. (Trial Tr., Vol. 1 at 102.) Only after further investigation was it revealed that the Lawyers' Title Refund Check had been deposited in the Broadway Bank Account. (Trial Tr., Vol. 1 at 100-103 and Vol. 3 at 545.) (Pl.'s Exhs. 25 and 31.) The Lawyers' Title refund deposit receipt (the "Lawyers' Title Refund Deposit Receipt") reflects that in August 2004, Mary Roberts deposited the Lawyers' Title Refund Check into the Broadway Bank Account that was held jointly by Debtors and Mary Roberts's father. (Trial Tr., Vol. 2 at 338.) (Pl's Exh. 29.) Notably, the jointly held Broadway Bank Account was referred to as the "Burwick account." (Trial Tr., Vol. 2 at 339.) The Broadway Bank Account was opened on August 18, 2004, and closed in December 2006. (Trial Tr., Vol. 3 at 570.)

Debtors claimed that the Broadway Bank Account belonged to Mary Roberts's father. (Trial Tr., Vol. 2 at 466 and Vol. 3 at 537.) In contrast to that claim, however, Debtors signed the

Broadway Bank Account signature card (Pl.'s Exh. 30), their names were on the monthly bank statements (e.g., Pl.'s Exh. 37), and Mary Roberts possessed a checkbook for the account and wrote numerous checks for personal expenses out of the account. (Trial Tr., Vol. 3 at 540-545 and 560-568.) As of the Petition Date, the Broadway Bank Account had a balance of approximately $4,048.00. (Trial Tr., Vol. 3 at 551.) Throughout the trial, it was Debtors' contention that the $1,000.00 had been expended. (Trial Tr., Vol. 3 at 629.) It was not until they filed their eighth set of Schedules that Debtors' interest in the Broadway Bank Account was disclosed. (Trial Tr., Vol. 1 at 138.)

It is apparent that Debtors concealed the $1,000.00 Lawyers' Title Earnest Money Deposit in a joint bank account with Mary Roberts's father with the intent to hinder, delay, or defraud the Chapter 7 Trustee in violation of § 727(a)(2)(A) and/or (B).

2. ***Denial of Discharge under 11 U.S.C. § 727(a)(3)***.

The U.S. Trustee seeks denial of discharge under 11 U.S.C. § 727(a)(3), Count III A, for Destruction of and/or Failure to Keep or Preserve Records of the Lawyers' Title Earnest Money Deposit. "Section 727(a)(3) entitles individual debtors to a discharge unless 'the debtor has . . . failed to keep or preserve any recorded information . . . from which the debtor's financial condition [or business transactions] . . . might be ascertained, unless such . . . failure . . . was justified under all the circumstances.'" ***Robertson v. Dennis*** (***In re Dennis***), 330 F.3d 696, 703 (5th Cir. 2003) (quoting§ 727(a)(3) of the Bankruptcy Code).

After questioning by the U.S. Trustee and receiving various requests for production from both the U.S. Trustee and the Chapter 7 Trustee, Debtors were initially unable to recall or produce

any information regarding the Lawyers' Title Check that Mary Roberts wrote out of her personal account on June 12, 2004. (Trial Tr., Vol. 1 at 94-103.) (Pl.'s Exh. 21.)

In response to a motion to compel, Debtors' attorney faxed a letter to the Chapter 7 Trustee stating, in part, that Debtors did not have the Lawyers' Title Deposit Refund Receipt for the Lawyers' Title Refund Check because deposit receipts were only kept by Mary Roberts until she could verify from the bank statement that the deposits were properly credited. (Trial Tr., Vol. 1 at 97-98.) (Pl.'s Exh. 23.) It was not until he received a copy of the Lawyers' Title Refund Check (Pl.'s Exh. 24.) that the Chapter 7 Trustee discovered the check had been deposited in the Broadway Bank Account that Debtors held jointly with Mary Roberts's father. (Trial Tr., Vol. 1 at 100-103.) (Pl.'s Exh. 25.) It was determined from the Lawyers' Title Deposit Refund Receipt that Mary Roberts deposited the Lawyers' Title Refund Check into the Broadway Bank Account in August 2004. (Pl's Exh. 29.) (Trial Tr., Vol. 2 at 338-339 and Vol. 3 at 539.) In his testimony, the Chapter 7 Trustee claimed that Debtors failed to provide complete Broadway Bank Account records and that he only received a partial account statement (Pl.'s Exh. 25) from Debtors' attorney. (Trial Tr. Vol. 1 at 102-103.)

According to Debtors, however, the Broadway Bank Account records were in the sole possession of Mary Roberts's father; therefore, it would not have been legally possible for them to keep or preserve the records, as the Trustee claimed. (Trial Tr., Vol. 2 at 466-467.) Mary Roberts testified, however, that she (1) signed the signature card of the Broadway Bank Account (Pl.s' Exh. 30) and had possession of the Broadway Bank Account checkbook; (2) maintained a check register for the Broadway Bank Account; (3) wrote checks out of the Broadway Bank Account; and (4) could have asked her father, Daniel F. Schorlemer, for the Broadway Bank Account records. (Trial Tr.,

Vol. 3 at 540-545.) It is apparent, therefore, that Mary Roberts did have access at all times to the Broadway Bank Account. It was only when Debtors' eighth Schedules were filed that the Broadway Bank Account was finally disclosed. (Trial Tr., Vol. 3 at 537.) (Pl.'s Exh. 12.)

"A debtor's financial records need not contain 'full detail,' but 'there should be written evidence' of the debtor's financial condition." ***Dennis*** at 703 (quoting ***Goff v. Russell Co.*** (***In re Goff***), 495 F.2d 199, 201 (5th Cir. 1974)). It is not realistic for Debtors to be characterized as unsophisticated wage earners who keep and file records appropriate to that of a common wage earner with commonplace assets and liabilities. *See* ***id***. It is especially notable that Debtors initially were unable to provide or recall any information regarding the Lawyers' Title Check, even though they are both attorneys with advanced degrees and have experience running businesses, investments, and nonprofit entities. (Trial Tr., Vol. 1 at 224-225.) It is, therefore, inconceivable that they failed to keep or preserve any recorded information regarding a deposit that was made less than two months prior to the Petition Date. In addition, Debtors' claim that Mary Roberts's father had possession of the records is not a sufficient justification for their failure to keep and preserve records of the Lawyers' Title Earnest Money Deposit.

3. ***Denial of Discharge under 11 U.S.C. § 727(a)(4)(A)***.

In reviewing claims similar to those made by the U.S. Trustee against Debtors, the Fifth Circuit has held:

> Full disclosure of assets and liabilities in the schedules required to be filed by one seeking relief under Chapter 7 is essential, because the schedules "serve the important purpose of insuring that adequate information is available for the Trustee and creditors without need for investigation to determine whether the information provided is true."

Beaubouef v. Beaubouef (***In re Beaubouef***), 966 F.2d 174, 179 (5th Cir. 1992) (quoting ***In re Urban***, 130 B.R. 340, 344 (Bankr. M.D. Fla. 1991)).

Section 727(a)(4)(A) of Chapter 11 of the United States Code provides, in pertinent part:

> (a) The court shall grant the debtor a discharge, unless–
>
> . . . .
>
> (4) The debtor knowingly and fraudulently, in or in connection with the case–
>
> (A) made a false oath or account . . . .

11 U.S.C. § 727(a)(4)(A). The U.S. Trustee had the burden to prove the following elements: (1) Debtors made a statement under oath; (2) the statement was false; (3) Debtors knew the statement was false; (4) Debtors made the statement with fraudulent intent; and (5) the statement related materially to the bankruptcy case. ***Beaubouef***, 966 F.2d at 178. "False oaths sufficient to justify the denial of discharge include: '(1) a false statement or omission in the debtor's schedules or (2) a false statement by the debtor at the examination during the course of the proceedings.'" ***Id***. (quoting 4 COLLIER ON BANKRUPTCY ¶ 727.04[1] at 727-59 (15th ed. 1992)). False oaths sufficient to justify the denial of discharge also include false statements or omissions in the SOFA. ***Sholdra v. Chilmark Fin. LLP*** (***In re Sholdra***), 249 F.3d 380, 382-83 (5th Cir. 2001). "An omission of an asset can constitute a false oath." ***Cadle Co. v. Pratt*** (***In re Pratt***), 411 F.3d 561, 566 (5th Cir. 2005). "The subject matter of a false oath is "material,' [sic] and thus sufficient to bar discharge, if it bears a relationship to the bankrupt's business transactions or estate, or concerns the discovery of assets, business dealings, or the existence and disposition of his property." ***Beaubouef***, 966 F.2d at 178 (quoting ***In re Chalik***, 748 F.2d 616, 617 (11th Cir. 1984)).

A bankruptcy court cannot deny a discharge when items are omitted from the schedules by honest mistake. ***Beaubouef***, 966 F.2d at 178. The existence of more than one falsehood, together with a debtor's failure to take advantage of the opportunity to correct all inconsistencies and omissions by filing amended schedules, however, constitutes reckless indifference to the truth and, therefore, the requisite intent to deceive. ***Id***. Fraudulent intent or reckless indifference to the truth can be proven by circumstantial evidence. ***Sholdra***, 249 F.3d at 382.

It is a matter of record that Debtors amended their bankruptcy schedules seven times throughout their Chapter 11 bankruptcy case and subsequent conversion to Chapter 7.

A. ***Count I. Denial of Discharge under 11 U.S.C. § 727(a)(4)(A) for Filing a False Statement of Financial Affairs (Ezekiel I)***.

Ted Roberts was the partner and/or managing partner of Ezekiel through 2003, and Mary Roberts was a partner of Ezekiel through at least 2002. (Trial Tr., Vol. 2 at 344.) Ezekiel was an investment partnership established to take advantage of private placement of the VSI/Simtrol Stock. (Trial Tr., Vol. 2 at 411.) As of the trial date, Ezekiel had not been formally dissolved. (Trial Tr., Vol. 2 at 357.)

Debtors' involvement in Ezekiel during the six-year period prior to the date they filed bankruptcy was not disclosed initially, as required by question 18 of the Original SOFA. (Trial Tr., Vol. 2 at 358-359.) (Pl.'s Exh. 3.) Question 18 requires a debtor to list the name and address of all businesses in which debtor was an officer, director, partner, or managing executive of a corporation or partnership within the six years immediately preceding the commencement of a debtor's bankruptcy case. (Pl.'s Exh. 3 ¶ 18a.) Debtors' Original SOFA also contained a "Declaration Concerning Debtor's Statement of Financial Affairs" signed by Debtors in which they declared,

under penalty of perjury, that the information contained therein was true and correct. (Pl.'s Exh. 3.) Ted Roberts gave two reasons for failing to disclose Ezekiel on the Original SOFA. First, he claimed, based on his own understanding of a business, that an inactive single-asset general partnership was not in fact a business; therefore, he did not think Ezekiel needed to be listed on the Original SOFA. (Trial Tr., Vol. 2 at 358-359.) Second, he claimed that he was given an old statement of financial affairs form as a worksheet that looked back only two years instead of six years. (Trial Tr., Vol. 2 at 439.)

The Original SOFA that was signed by Debtors, however, clearly contained the six-year look back language. (Trial Tr., Vol. 2 at 360.) (Pl.'s Exh. 3.) Debtors contended that they did not read the question on the Original SOFA and/or assumed it was identical to the sample form that they received from their bankruptcy attorney. (Trial Tr., Vol. 3 at 647-648.)

The evidence also reveals that the Assumed Name Certificate filed by Ted Roberts in 2000 stated that Ezekiel was an assumed name "FOR AN UNINCORPORATED BUSINESS OR PROFESSION OTHER THAN A LIMITED PARTNERSHIP, REGISTERED LIMITED LIABILITY PARTNERSHIP, OR LIMITED LIABILITY COMPANY." (Pl.'s Exh. 47.) (Trial Tr., Vol. 2 at 345.) There are also several other references to the term "Business" in the Assumed Name Certificate. (Pl.'s Exh. 47.) Immediately underneath the definition of "business" in BLACK'S LAW DICTIONARY, as discussed during trial (Trial Tr., Vol. 2 at 360) and relied on by Ted Roberts in his examination of the Chapter 7 Trustee (Trial Tr., Vol. 2 at 146-147), is the following: "*See Also* Association; Company; Corporation . . . Partnership . . . ." BLACK'S LAW DICTIONARY 198 (6th ed. 1990). More importantly, Ted Roberts's education and background as a licensed attorney with an M.B.A. and previous experience operating an investment consultant entity makes it implausible that

he could have had such a misconception. In addition, Debtors' bankruptcy attorney was board certified in consumer and business bankruptcy. (Trial Tr., Vol. 3 at 519.) Mary Roberts agreed to include Ezekiel on an amended SOFA only after the U.S. Trustee suggested the inclusion at the § 341 meeting. (Trial Tr., Vol. 3 at 615-616.) Debtors' bankruptcy attorney concurred with the U.S. Trustee that Ezekiel should have been listed on Debtors' SOFA and Schedules. (Trial Tr., Vol. 2 at 499.)

Disclosure of Ezekiel could "have led to the discovery of assets [business dealings] and[/]or the existence and disposition of . . . property." ***Beaubouef***, 966 F.2d at 179. As Ted Roberts stated, all of his finances were under a microscope because of the state court litigation involving Ezekiel that was filed in Bexar County, Case No. 2001-CI-17681. (Trial Tr., Vol. 2 at 343-344.) After Ezekiel was disclosed, it was discovered that Ted Roberts made deposits of around $298,000.00 for his personal benefit into a Fidelity Investment account held in the name of Ezekiel. (Trial Tr., Vol. 2 at 357 and 415.) (Pl.'s Exh. 58.) It is irrelevant that Ezekiel was inactive on the Petition Date because full disclosure of this type of business is a requirement. "The recalcitrant debtor may not escape a section 727(a)(4)(A) denial of discharge by asserting that the admittedly omitted or falsely stated information concerned a worthless business relationship or holding; such a defense is specious." ***Id***. at 178 (quoting ***Chalik***, 748 F.2d at 617).

B. ***Count II. Denial of Discharge under 11 U.S.C. § 727(a)(4)(A) for Filing a False Statement of Financial Affairs (Roberts Foundation for Children)***.

Debtors were Directors of the Roberts Foundation for Children, a Texas nonprofit corporation, from December 28, 2001 until January 22, 2004. (Trial Tr., Vol. 2 at 371 and Vol. 3 at 574-576.) As was the case in the Ezekiel partnership, Debtors did not disclose their involvement

in the Foundation during the six-year period prior to the date they filed bankruptcy, as required by question 18 of the Original SOFA (Pl.'s Exh. 3) (Trial Tr., Vol. 2 at 462), even though they signed the Original SOFA declaring, under penalty of perjury, that the information contained therein was true and correct. (Pl.'s Exh. 3.) At trial, Ted Roberts gave two reasons for excluding the Foundation that were similar to the reasons for excluding Ezekiel. First, he stated that it was his understanding, based on his knowledge of a business, that an inactive nonprofit corporation was not a business. (Trial Tr., Vol. 2 at 361-362 and 462.) Second, he claimed that he was given an outdated statement of financial affairs form as a worksheet that looked back only two years instead of six years. (Trial Tr., Vol. 2 at 439.)

In April 2002, Ted Roberts contributed $70,000.00 into a Fidelity Investment account in the Foundation's name. (Trial Tr., Vol. 2 at 367-368.) (Pl.'s Exh. 65.) In February 2002, he made a second deposit into the Foundation's Compass Bank account in the amount of $10,000.00. (Trial Tr., Vol. 2 at 369-370.) (Pl.'s Exh. 64.) The Articles of Incorporation specified that the net earnings of the Foundation were not intended for the benefit of any director or officer of the Foundation. (Pl.'s Exh. 62.) (Trial Tr., Vol. 2 at 372.) Nonetheless, withdrawals were made by Ted Roberts from the Foundation accounts in the amounts of $50,000.00 and $19,000.00, respectively, for payment of the operating expenses of Ted H. Roberts, P.C. (Trial Tr., Vol. 2 at 373-374.) (Pl.'s Exh. 66-67.) Ted Roberts admitted that the withdrawals were not within the stated purpose of the Foundation. (Trial Tr., Vol. 2 at 373-375 and 377.) Ted H. Roberts, P.C., never repaid the $69,000.00 to the Foundation. (Trial Tr., Vol. 2 at 378.) On December 31, 2003, the Foundation was dissolved by resolution of the Directors, Mary and Ted Roberts.

The fact that the Foundation, as a nonprofit corporation, engaged in monetary loans in 2002 with a professional corporation, Ted Roberts, P.C., is material in showing the disposition of Debtors' property and business dealings. The supposed loans equate to financial transactions between two corporations that were owned by Debtors. The Foundation should have been disclosed on Debtors' Original SOFA. In addition, and as discussed above regarding the nondisclosure of Ezekiel, Ted and Mary Roberts's education and retention of a board certified bankruptcy attorney makes the explanation for nondisclosure of the Foundation specious.

C. ***Count III. Denial of Discharge under 11 U.S.C. § 727(a)(4)(A) for Filing False Schedules (Lawyers' Title Earnest Money Deposit)***.

As discussed more fully above in paragraph 1.C. and 2. and incorporated herein, Mary Roberts deposited the Lawyers' Title Refund Check into the Broadway Bank Account that was held jointly by Debtors and Mary Roberts's father. (Trial Tr., Vol. 1 at 100-103; Vol. 2 at 338; Vol. 3 at 545.) (Pl.'s Exhs. 25, 28, 29, 30.) As of the Petition Date, there was approximately $4,048.00 in the Broadway Bank Account. (Trial Tr. Vol. 3 at 551.) Debtors finally disclosed the Broadway Bank Account on their eighth Schedules and listed their interest in the account at $3,325.80. (Trial Tr., Vol. 3 at 537.) (Trial Tr., Vol. 1 at 262.) (Pl.'s Exh. 12.)

Debtors' interest in and disposition of the Lawyers' Title Earnest Money Deposit or the Broadway Bank Account were not disclosed on Debtors' Original Schedule "B" (Pl.'s Exh. 4), even though Debtors signed their Original Schedules declaring, under penalty of perjury, that the information contained therein was true and correct. (Pl.'s Exh. 4.) In addition, the record reflects that Debtors were given numerous opportunities to list the Lawyers' Title Earnest Money Deposit in their Schedules, which included the following: (1) the original Schedules filed by Debtors in the

Chapter 11 case on November 8, 2004; (2) Debtors' second Schedules filed on November 26, 2004; (3) Debtors' third Schedules filed on November 29, 2004; (4) Debtors' fourth Schedules filed on November 30, 2004; (5) Debtors' fifth Schedules filed on December 17, 2004; (6) the Chapter 7 conversion Schedules filed on April 15, 2005; (7) Debtors' seventh Schedules filed on July 29, 2005; and (8) Debtors' eighth Schedules filed on January 11, 2007.

As stated above, the Broadway Bank Account was not disclosed until Debtors filed their eighth Schedules. Debtors' failure to schedule the Lawyers' Title Refund Check or the Broadway Bank Account, after numerous opportunities, shows Debtors' reckless disregard for the truth.

D. ***Count IV. Denial of Discharge under 11 U.S.C. § 727(a)(4)(A) for Filing False Schedules (Martinez Earnest Money Deposit)***.

As discussed more fully above in paragraphs 1.A. and 1.B. and incorporated herein, Debtors listed the Martinez Contract on their Original Schedule "G" as executory and noted that they wanted to assume it. They did not, however, disclose their interest in the $5,000.00 Martinez Deposit. (Trial Tr., Vol. 3 at 585-586) (Pl.'s Exh. 4.) The Chapter 7 Trustee believed that the Martinez Deposit should have been listed as an asset of the bankruptcy estate. (Trial Tr., Vol. 1 at 96.) Even though Debtors signed the Original Schedules declaring, under penalty of perjury, that the information contained therein was true and correct (Pl.'s Exh. 4.), they failed to disclose the Martinez Deposit through and including their eighth Schedules. This repeated failure to disclose shows Debtors' reckless indifference to the truth.

E. ***Count V. Denial of Discharge under 11 U.S.C. § 727(a)(4)(A) for Filing False Schedules and False Statements of Financial Affairs (ACIS Stock)***.

Debtors admitted that they did not disclose the ACIS Stock on their Original Schedules (Pl.'s Exh. 4) and Original SOFA (Pl.'s Exh. 3). (Trial Tr., Vol. 2 at 391-392.) In July 2003, they claimed

that the ACIS Stock was valued at $1,500.00 (Pl.'s Exh. 39); however, on November 29, 2004, Debtors valued the ACIS Stock at only $100.00. (Pl.'s Exh. 7.) Regardless of the value, Debtors' ACIS Stock should have been listed as an asset of the estate.

Question 12 of the SOFA requires that a debtor name each safe deposit box or depository in which a debtor had securities, cash, or other valuables within one year immediately preceding the commencement of a case. (Pl.'s Exh. 3.) Item 12 of Schedule "B" is where Debtors should have listed their interest in the ACIS Stock. (Pl.'s Exh. 4.) Under penalty of perjury, Debtors signed the Original Schedules (Pl.'s Exh. 4) and the Original SOFA (Pl.'s Exh. 3) without listing the ACIS Stock. On November 29, 2004, Debtors included the ACIS Stock on the SOFA in their third Schedules (Pl.'s Exh. 6); on November 30, 3004, they included it on their fourth Schedules on Schedule B (Pl.'s Exh. 7).

Debtors claimed that their failure to list the ACIS Stock was an oversight because the stock certificates were stored in an unmarked envelope in their safe deposit box. (Trial Tr., Vol. 2 at 393.) Ted Roberts stated that he did not look inside the safe deposit box prior to the § 341 meeting on November 15, 2004, because Mary Roberts had recently reviewed the contents. (Trial Tr., Vol. 2 at 391-394.) Mary Roberts stated that she had not examined all of the contents of the safe deposit box prior to signing the SOFA because she did not think it was necessary. (Trial Tr., Vol. 3 at 582-583.) She said that she had opened the safe deposit box a month to six weeks prior to the Petition Date to look for her son's birth certificate, and therefore did not think it was necessary to go back and review the contents again. (Trial Tr., Vol. 3 at 610.) In addition, Ted Roberts testified that he had previously volunteered discovery of the ACIS Stock at the § 341 meeting. (Trial Tr., Vol. 2 at 393-394.)

Approximately fifteen months earlier, however, Debtors listed the ACIS Stock on the IRS Financial Information Statement, which they gave to the IRS. (Trial Tr., Vol. 1 at 225-228 and Vol. 3 at 580-581.) (Pl.'s Exh. 39.) They admitted that they had not looked at the IRS Financial Information Statement prior to filing their Original Schedules and Original SOFA. (Trial Tr., Vol. 2 at 392 and Vol. 3 at 581-582.) In addition, Ted Roberts stated that his bankruptcy attorney told him to essentially inventory all of the property owned by Debtors in preparation for the bankruptcy. (Trial Tr., Vol. 2 at 394-395.) Debtors' neglect in inventorying all of their assets and their blatant disregard for the requirement of full disclosure is another example of their reckless indifference to the truth.

F. ***Count VII. Denial of Discharge under 11 U.S.C. § 727(a)(4)(A) for Filing False Schedules (Claim against Ted H. Roberts, P.C.)***.

As of October 13, 2004, Debtors had a Claim against Ted H. Roberts, P.C., in the amount of $35,625.00 (Trial Tr., Vol. 3 at 596.) for a loan that Debtors made to Ted H. Roberts, P.C. The Claim was not disclosed until Debtors' fifth Schedules. (Pl.'s Exh. 8.) In their defense, Debtors asserted that not only was there no promissory note to evidence Debtors' personal claim against Ted H. Roberts, P.C., but also that Ted H. Roberts, P.C., had a larger claim against Debtors in the amount of $154,930.00. Therefore, they testified that it would not have been possible for the estate to receive a net amount. (Trial Tr., Vol. 2 at 479, 501 and Vol. 3 at 607.) That is why they claimed to be unaware of the Claim when they filed their Original Schedules and Original SOFA. (Trial Tr., Vol. 2 at 479.) Debtors also disputed that the sums of money transferred to Ted H. Roberts, P.C., were actually loans. (Trial Tr., Vol. 2 at 501.)

It appears, however, that Debtors were aware of the loan to Ted H. Roberts, P.C., and in fact considered the debts of Ted H. Roberts, P.C., when calculating the net value of the P.C. for the IRS Financial Information Statement. (Trial Tr., Vol. 2 at 502.) (Pl.'s Exh. 39.) It further appears that Debtors agreed that the Claim could have been used to set off or reduce the claim of Ted H. Roberts, P.C., against Debtors. (Trial Tr., Vol. 2 at 501.)

It was during the § 341 meeting in the spring of 2005 that the Chapter 7 Trustee asked Debtors whether there were any claims between Debtors and Ted Roberts, P.C., that should have been listed on Debtors' Schedule "F." (Trial Tr., Vol. 1 at 124.) In his testimony, the Chapter 7 Trustee stated that he would have wanted to know about any claims because (1) if there had been a claim, Ted H. Roberts, P.C., could have filed a proof of claim against Debtors; and (2) he might have wanted to pursue any possible claim against Ted H. Roberts, P.C. (Trial Tr., Vol. 1 at 124-125.) The Chapter 7 Trustee also testified that the claims between Debtors and Ted H. Roberts, P.C., could have been set off, and if a proof of claim had been filed, he would have indicated a setoff or counterclaim. (Trial Tr., Vol. 1 at 152.) He testified further that Debtors had asked him to abandon the estate's interest against Ted Roberts, P.C., in July and/or August 2005, but he decided not to abandon it at that point because he lacked information regarding the assets, liabilities, and financial affairs of the P.C. (Trial Tr., Vol. 1 at 125-126.) The Chapter 7 Trustee did, however, reserve a claim to a contingent fee to the bankruptcy estate, and required Ted H. Roberts, P.C., to subordinate its claim to all other proofs of claim in the bankruptcy case.

The foregoing reveals that Debtors were actually aware that the Claim was an asset of the estate and that it should have been disclosed before the fifth Schedules were filed.

CONCLUSION

The Court finds in favor of the Trustee on the objection to discharge under 11 U.S.C. § 727(c)(1) and the asserted actions under: (1) § 727(a)(4)(A) for filing a false statement of affairs and schedules; (2) § 727(a)(3) for destruction of and/or failure to keep or preserve records; and (3) § 727(a)(2)(A) and (B) for concealing and transferring assets with the intent to hinder, delay, or defraud. Plaintiff will be awarded judgments on Counts I through V, VII, IX, X, and XIV. Plaintiff's requested relief under Counts VI, VIII, XI, XII, and XIII will be denied.

Any Finding of Fact that should more appropriately be charactered as a Conclusion of Law shall be considered a Conclusion of Law herein. Similarly, any Conclusion of Law that should more appropriately be characterized as a Finding of Fact shall be considered as a Finding of Fact herein.

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